EXHIBIT 5

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1
 1
                 UNITED STATES DISTRICT COURT
       NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION
 2
 3
      APPLE INC., a California
 4
 5
      Corporation,
                   Plaintiff, :
 6
 7
      v.
      SAMSUNG ELECTRONICS CO., LTD., a :
 8
      Korean corporation; SAMSUNG : Civil Action No.
 9
      ELECTRONICS AMERICA, INC., a New: 12-cv-00630-LHK(PSG)
10
11
      York corporation; and SAMSUNG :
      TELECOMMUNICATIONS AMERICA, LLC, :
12
13
      A Delaware limited liability :
      Company,
14
                Defendants.
15
16
      (Caption continued on next page)
17
       HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
18
     VIDEOTAPED DEPOSITION OF JAMES R. KEARL, Ph.D.
19
20
                  Salt Lake City, Utah
21
                Friday, October 4, 2013
                       9:22 a.m.
22
      Job No.: 44751
23
      Pages: 1 - 307
24
      Reported By: Vickie Larsen, CSR/RMR
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| | 2 |
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| 1 | (Caption continued from previous page) |
| 2 | X |
| 3 | SAMSUNG ELECTRONICS CO., LTD., a : |
| 4 | Korean corporation; SAMSUNG : |
| 5 | ELECTRONICS AMERICA, INC., a New: |
| 6 | York corporation; and SAMSUNG : |
| 7 | TELECOMMUNICATIONS AMERICA, LLC, : |
| 8 | A Delaware limited liability : |
| 9 | Company, : |
| 10 | Counterclaim-Plaintiffs, : |
| 11 | V. : |
| 12 | APPLE INC., a California : |
| 13 | Corporation, : |
| 14 | Counterclaim-Defendant. : |
| 15 | X |
| 16 | Videotaped Deposition of JAMES R. KEARL, Ph.D., |
| 17 | held at the offices of: |
| 18 | |
| 19 | HILTON SALT LAKE CITY CENTER |
| 20 | 255 South West Temple |
| 21 | Salt Lake City, Utah 84101 |
| 22 | (801) 328-2000 |
| 23 | |
| 24 | Pursuant to notice, before Vickie Larsen, CSR, RMR, |
| 25 | and Notary Public in and for the State of Utah. |

| | 3 |
|----|---|
| 1 | APPEARANCES |
| 2 | On behalf of Plaintiff and Counterclaim-Defendant |
| 3 | Apple Inc.: |
| 4 | Michael R. Heyison, Esquire |
| 5 | Joseph J. Mueller, Esquire |
| 6 | Russell Tonkovich, Esquire |
| 7 | WILMER CUTLER PICKERING HALE and DORR |
| 8 | 60 State Street |
| 9 | Boston, Massachusetts 02109 |
| 10 | (617) 526-6396 |
| 11 | |
| 12 | On behalf of Defendants and |
| 13 | Counterclaim-Plaintiffs Samsung parties: |
| 14 | Scott B. Kidman, Esquire |
| 15 | Alex Baxter, Esquire |
| 16 | Chris E. Price, Esquire |
| 17 | QUINN EMANUEL URQUHART & SULLIVAN |
| 18 | 865 South Figueroa Street, 10th Floor |
| 19 | Los Angeles, California 90017 |
| 20 | (213) 443-3000 |
| 21 | |
| 22 | Also Present: |
| 23 | Tyler Larsen (Videographer) |
| 24 | |
| 25 | |

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF JAMES R. KEARL, Ph.D. CONDUCTED ON FRIDAY, OCTOBER 4, 2013

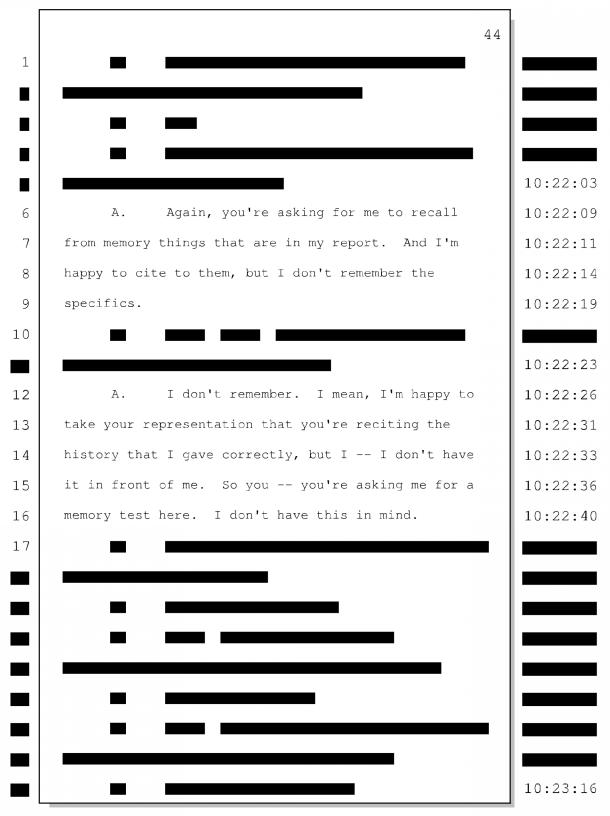
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|----|----------------|------------------------------------|------|
| 1 | | C O N T E N T S | |
| 2 | EXAMINATION OF | F JAMES R. KEARL, Ph.D. | PAGE |
| 3 | By Mr. A | Heyison | 7 |
| 4 | By Mr. N | Mueller | 153 |
| 5 | By Mr. P | Kidman | 299 |
| 6 | By Mr. H | Heyison | 301 |
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| 9 | | | |
| 10 | | EXHIBITS | |
| 11 | | (Attached to transcript) | |
| 12 | KEARL DEPOSIT | ION EXHIBIT | PAGE |
| 13 | Exhibit 1 E | Expert Report of Dr. James R. | 12 |
| 14 | P | Kearl | |
| 15 | Exhibit 2 | Appendix to Dr. Kearl's report | 13 |
| 16 | EXhibit 3 E | Errata to Corrected Expert Report | 13 |
| 17 | C | of Dr. James R. Kearl | |
| 18 | Exhibit 4 (| Corrected Report of Dr. James R | 58 |
| 19 | P | Kearl | |
| 20 | Exhibit 5 (| Category M document | 61 |
| 21 | Exhibit 6 E | Expert Report of Sanjay K. Rao | 68 |
| 22 | F | Response to Samsung's First Set of | |
| 23 | נ | Interrogatories | |
| 24 | Exhibit 7 | Apple Supplement | 150 |
| 25 | | | |

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| 1 | | EXHIBITS | |
| 2 | KEARL DEPOSI | ITION EXHIBIT | PAGE |
| 3 | Exhibit 8 | Expert Rebuttal Report of | 190 |
| 4 | | Dr. James R Kearl | |
| 5 | Exhibit 9 | Letter dated August 3, 2013, to | 204 |
| 6 | | Irving Williamson from Michael | |
| 7 | | B.G. Froman | |
| 8 | | | |
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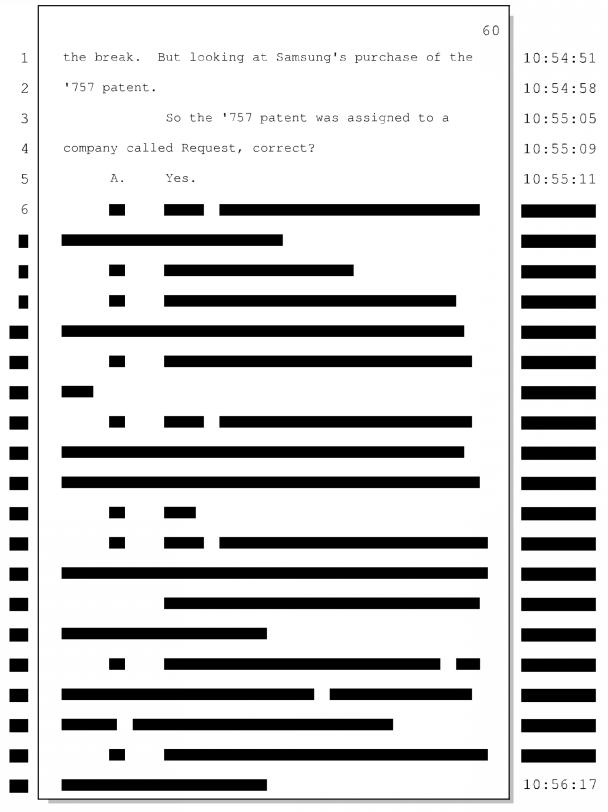
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CONDUCTED ON FRIDAY, OCTOBER 4, 2013 42 1 successful, correct? 10:19:22 2 Α. That's my understanding. 10:19:23 3 10:20:25

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| | | 10:21:1 |
| 14 | A. Correct. I'm happy to go to my report. | 10:21:1 |
| 15 | It's in Appendix A, so but it's not here. | 10:21:1 |
| 16 | Q. So it's in Appendix A. | 10:21:2 |
| 17 | And what I'm trying to do is, see, I'm | 10:21:2 |
| 18 | trying to get the August 19 version of the report so I | 10:21:2 |
| 19 | can put it in front of you. But since I don't have it | 10:21:3 |
| 20 | you see I'm a little bit it's a little difficult. | 10:21:3 |
| 21 | MR. KIDMAN: We may have one. At the | 10:21:4 |
| 22 | break we can look and see if we've got a clean copy of | 10:21:4 |
| 23 | one. | 10:21:4 |
| 24 | MR. HEYISON: Okay. That would be good. | 10:21:4 |
| 25 | I think Russ went to make a copy of it. | 10:21:4 |



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| | | 10.00.00 |
| • | | 10:23:33 |
| 7 | Q. Okay. And, well, we know you do know | 10:23:35 |
| 8 | that LG is a company that makes smart phones, correct? | 10:23:38 |
| 9 | A. Yes. | 10:23:42 |
| 10 | Q. And you do know that Intel is the largest | 10:23:42 |
| 11 | chip maker in the world, correct? | 10:23:46 |
| 12 | A. Of certain kinds of chips. | 10:23:48 |
| 13 | Q. Yes. | 10:23:51 |
| 14 | A. Not all chips. | 10:23:52 |
| 15 | Q. Okay. They're the largest maker of CPUs | 10:23:53 |
| 16 | in the world, correct? | 10:23:57 |
| 17 | A. That I don't know. | 10:23:58 |
| 18 | | |
| | | |
| | | 10:24:09 |
| 21 | Q. Okay. And Samsung purchased the '239 | 10:24:10 |
| 22 | patent and one other patent, the '716 patent, correct? | 10:24:15 |
| 23 | A. Yes. | 10:24:21 |
| 24 | Q. Okay. And they did that in September | 10:24:22 |
| 25 | 2011? | 10:24:25 |
| [| | |



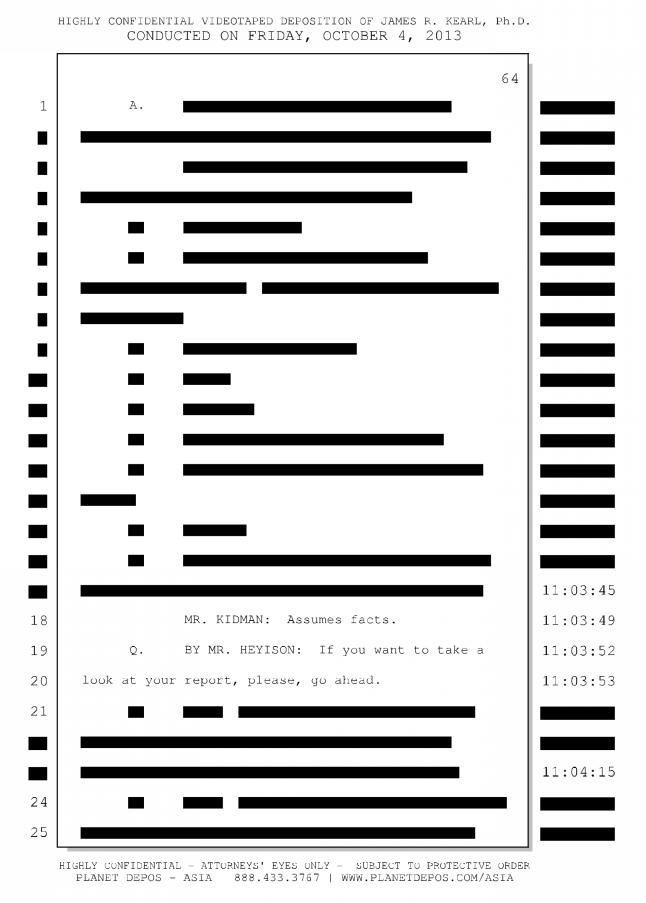
| | 61 | |
|----|---|----------|
| 1 | A. Yes. | 10:56:18 |
| 2 | Q. Okay. I've just I need to get a | 10:56:18 |
| 3 | document. Excuse me. Just give me one minute. | 10:56:26 |
| 4 | Why don't we can we go off the record | 10:56:34 |
| 5 | for a sec? | 10:56:38 |
| 6 | THE VIDEOGRAPHER: We're going off the | 10:56:39 |
| 7 | record. The time is 10:56. | 10:56:41 |
| 8 | (There was a break taken.) | 10:57:15 |
| 9 | THE VIDEOGRAPHER: We are going on the | 10:58:52 |
| 10 | record. The time is 10:59. | 10:59:06 |
| 11 | (Exhibit 5 was marked for identification.) | 10:59:20 |
| 12 | MR. HEYISON: So I've we've marked as | 10:59:22 |
| 13 | Exhibit 5 what is Cholnoky Exhibit 3. | 10:59:24 |
| 14 | MR. KIDMAN: Do you happen to have an | 10:59:32 |
| 15 | extra? | 10:59:34 |
| 16 | MR. HEYISON: I'm sorry, yeah. | 10:59:34 |
| 17 | Q. Okay. Have you seen this document | 10:59:45 |
| 18 | before, Doctor? | 10:59:47 |
| 19 | A. I don't recall. | 10:59:49 |
| 20 | Q. Okay. | 10:59:51 |
| 21 | A. If it's cited in my materials I've | 10:59:53 |
| 22 | considered then I have. | 10:59:57 |
| 23 | Q. Okay. So, Doctor, this if you look on | 10:59:58 |
| 24 | the second page of this document, | |
| | | 11:00:13 |

| | 62 | |
|----|---|----------|
| 1 | | |
| | | 11:00:28 |
| 3 | A. Correct. | 11:00:29 |
| 4 | Q. Okay. And you can't remember, sitting | 11:00:30 |
| 5 | here today, whether you considered this Exhibit 5 in | 11:00:35 |
| 6 | connection with preparation of your report, correct? | 11:00:40 |
| 7 | A. Well, let me let me clarify. If it's | 11:00:43 |
| 8 | to just tell you sort of the style in which the | 11:00:49 |
| 9 | report is written. | 11:00:51 |
| 10 | If it's listed in the materials | 11:00:52 |
| 11 | considered, then we had access to it. And I don't | 11:00:55 |
| 12 | remember whether I read it or not. | 11:00:57 |
| 13 | If it's in the footnotes, then in fact I | 11:00:58 |
| 14 | reviewed it personally. So all documents cited in the | 11:01:00 |
| 15 | footnotes I've seen and I we could go through. I | 11:01:04 |
| 16 | don't know whether this is cited in the footnotes or | 11:01:08 |
| 17 | not. | 11:01:09 |
| 18 | Q. But sitting here today, this document | 11:01:10 |
| 19 | doesn't ring a bell as something you've seen before? | 11:01:13 |
| 20 | A. No. I mean, I remember or recall that | 11:01:16 |
| 21 | | |
| | | |
| | | |
| | | |
| | | 11:01:40 |

63 1 11:03:03 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - SUBJECT TO PROTECTIVE ORDER

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